IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 316 OF 2004

M/s. Zuari Industries Ltd.,
being a Company registered under
Companies Act, 1956, having its
factory at Zuarinagar, Goa. ..... Petitioner.

V/s.

1. Goa Shops & Industrial Worker's Union,
Registered Office at B/4- 2, `Karishma'
Martires Dias Vishant, Aquem Alto,
Margao, Goa 403 601.

2. Mr. Deepak Kharangate,
Balrishna Niwas, Coldem Road,
Navelim, Salcete, Goa.

3. Industrial Tribunal,
1st Floor, Shram Shakti Bhavan,
Patto, Panaji, Goa. ..... Respondents.

Mr. Janak Dwarkadas, Sr. Advocate with Mr. C.V. Singh and Mr. Girish Sardessai, Advocates for the petitioner.

Mr. J.P. Cama, Sr. Advocate with Mr. V. Menezes, Advocate for respondent No.1.

Mr. S.S. Kantak, Advocate for respondent No.2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. D. Lawande, Addl. Govt. Advocate for respondent No.3.

CORAM : B.H. MARLAPALLE, J.

Date of reserving the Order :
September 24, 2004.

Date of Pronouncing the Order :
October 06, 2004.

ORAL ORDER :

Heard Mr. Janak Dwarkadas, the learned Senior Counsel, with Mr. C.V. Singh and Mr. Girish Sardessai, the learned Counsel for the petitioner; Mr. J.P. Cama, the learned Senior Counsel with Mr. V. Menezes, the learned Counsel for respondent No.1 Union; Mr. S.S. Kantak, the learned Counsel for respondent No.2 and Mr. A.N.S. Nadkarni, the learned Advocate General with Mr. D. Lawande, the learned Addl. Govt. Advocate for respondent No.3.

2. Respondent No.1 Union had approached this Court in Writ Petition No. 130/1997 which was disposed of by order dated 18th September, 2002, with a direction to the State Government to consider the demand of the Union for absorption of the canteen workers as employees of the petitioner Company, within a period of two months from the date of receipt of the copy of this Court's Order and in the event of the reference, the Industrial Tribunal was directed to decide the same within a period of one year. The Union submitted demands against the Company and the Assistant Labour Commissioner made a a failure report on 18.11.2002. The State Government considered the same and by order dated 7.4.2003, referred the following issues for adjudication to the Industrial Tribunal at Panaji :

> " 1. Whether the following dispute/demands raised by the Goa Shops and Industrial Workers Union on 30.9.2003, on behalf of the canteen contract work-

persons at M/s. Zuari Industries Ltd., are legal and justified ?

(a) That the contract between ZACL (ZIL) and Shri Deepak Kharangate with regard to running of the canteen in the factory premises is a sham and bogus contract.

(b) That the workmen whose names are listed in Annexures A and B hereto and who are/were employed in the canteen at ZACL (ZIL) through the contractor are entitled to be absorbed as regular workmen of ZACL (ZIL) from 12.3.1997;

(c) That the canteen contract workpersons after regularisation are entitled to fitment as detailed in Annexure "C".

2. If not, what relief the workpersons are entitled to ?"

3. The said reference came to be registered as Reference No. IT/21/2003 and that respondent Union as Party I and the petitioner Company as Party II. Party I filed an application at Exhibit-4 for impleading the contractor Shri Deepak Kharangate as a party to the reference and accordingly, the said contractor was impleaded as Party II (2). The Union filed statement of claim at Exhibit-5 and the petitioner company filed written statement at Exhibit-8 and opposed the demands on merits as well as on the preliminary point regarding the maintainability of the reference. It further stated that it maintained two canteens under Section 46 of the Factories Act, one for the employees working in the plant office and the other for the workmen of the contractors working in the factory. The canteen contractor was registered under the Contract Labour (Regulation and Abolition) Act, 1970 (for

short, `the Contract Labour Act') for employment of contract labour and the contractor had obtained a licence for running the canteen. The Tribunal framed issues at Exhibit-15 and the reference was fixed for recording the evidence of the Union. When the evidence of the Union was partly recorded, the petitioner Company moved an amendment application at Exhibit-23 and the proposed amendments were incorporated in Annexure A and Annexure B to the said application. The Union filed its reply to the amendment application and opposed it. After hearing the respective parties at length, the Tribunal was pleased to reject the amendment application at Exhibit -23 by its Order dated 14.5.2003 and hence, this petition under Articles 227 of the Constitution, though it has been styled as a petition under Article 226 of the Constitution.

4. In Annexure A to the amendment application, the Company tried to improve its case by stating that one canteen was maintained under Section 46 of the Factories Act, 1948; whereas the other canteen was maintained as per the requirement under Section 16 of the Contract Labour Act. Whereas, in Annexure B, it sought to bring on record the reduction of employment and consequently the reduction in the strength of the canteen workers. The Industrial Tribunal noted that by the first part of the amendment the petitioner Company was trying to make out a different case than it had pleaded in its written statement at Exhibit-8 and this was an attempt to dislodge the Union's claim under reference to

some extent. It referred to the decision of the Supreme Court in the case of ***M/s. Modi Spinning and Weaving Mills Co. Ltd., and anr. vs. M/s. Ladha Ram & Co.*** (AIR 1977 SC 680), and more particularly the following observations :

> "It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admissions from the defendants. The High Court rightly rejected the application for amendment and agreed with the Trial Court."

The Industrial Tribunal was of the view that it was concerned with the issues referred to it and it could not enlarge the scope of the reference on the additional issues sought to be framed by the petitioner Company in the proposed amendments.

5. Mr. Dwarkadas, the learned Senior Counsel for the petitioner company submitted that it was seeking to bring on record the subsequent events after signing of the settlement dated 16.1.2003 between itself and the Trade Union's representatives, its regular employees and it was necessary for the Tribunal to take cognizance of the said events as they would have a direct bearing on the issues under reference. In support of these arguments, reliance has been placed on the decision of the Supreme Court in the case of ***Pasupuleti***

Venkateswarlu vs. The Motor & General Traders, (AIR 1975 SC 1409) and a decision of this Court (Single Bench) in the case of ***Brijlal and anr. vs. "Hotel Neelam-Lodging and Boarding", Aurangabad and ors, (***AIR 1983 Bombay 432).

It was further urged that consequential or related/incidental issues are required to be framed and decided by the Tribunal while adjudicating upon the issues under reference and the framing of such additional issues was warranted in view of the intervening developments regarding reduction of workforce. The following decisions were cited in support of these arguments: ***M/s. Unichem Laboratories Ltd. vs. The Workmen,*** (1972 3 SCC 552); ***M/s. M. Laxmi & Co. vs. Dr. Anant R. Deshpande and anorther*** , (AIR 1973 SC 171) and ***M/s. Agra Electric Supply Company Ltd., Agra vs. Workmen,*** (1993) 1 SCC 436. In the case of ***M/s. Laxmi & Co.***(supra), the Apex Court stated thus :

> "It is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the court also takes notice of such event. If the property which is the subject-matter of the suit is no longer available the court will take notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice."

To conclude his arguments, the learned Senior Counsel submitted that even, otherwise, it was necessary for the Tribunal to allow the petitioner Company to bring on record the subsequent events, so that in any future proceedings, it could not be accused of raising the said issues for the first time. A reference in this regard has been made to the decision in the case of ***Shkankar Chakravarti vs. Britannia Biscuit Co. Ltd. and another,*** (AIR 1979 SC 1652).

6. The respondent Union claims that the Company employs more than 2000 employees in its factory premises and under Section 46 of the Factories Act, it is required to maintain and run the canteen in its premises. The statutory canteen, thus run in the factory premises functions under the direct supervision and the administration of the Company and the day today running of the canteen is controlled and managed by an Officer appointed by the company. The company also decides the details of the functions, menu and supply of furniture, utensils, cutlery and crockery and supervision of work etc. The union, therefore, had approached the company with a demand to absorb the canteen workers in its employment and, thereafter, it had approached the Government of Goa with a demand to refer the dispute for adjudication. It had alleged that the so called arrangement of the contractor running the canteen was a sham and a bogus arrangement made out to avoid the liability of absorbing the additional workforce engaged in running the canteens. The artificial arrangement of an

agency in the name of a contractor was not permissible in law and the canteen workers were *de facto* the employees of the Company. In its statement of claim, the Union has set out its case, in detail, and the State Government has referred the specific issues for adjudication by the Industrial Tribunal.

7. The Constitution Bench of the Supreme Court in the case of ***Steel Authority of India Ltd., & Ors. etc. etc. vs. National Union Water Front Workers & Ors. etc. etc.*** (2001 III CLR 349), framed the following three points: (a) What is the true and correct import of the expression "appropriate government" as defined in clause (a) of sub-section (1) of Section 2 of the Contract Labour Act; (b) whether the notification dated December 9, 1976 issued by the Central Government under Section 10(1) of the Contract Labour Act is valid and applies to all Central Government companies; and (c) whether automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, follows on issuance of a valid notification under Section 10(1) of the Contract Labour Act, prohibiting the contract labour in the concerned establishment. It summarised its conclusion in para 121 and the observations made in sub-clauses 5 and 6 are relevant to be reproduced :

> "(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labourer or otherwise, in an industrial dispute brought before it by any contract labourer in regard to conditions of service, the industrial adjudicator will have to consider the question

> whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labourer for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labourer will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
>
> (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labourer in any process, operation on other work of any establishment and wherein such process, operation of other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labourer, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

8. By following the law laid down in the case of ***Steel Authority of India Ltd., & Ors. etc. etc. (supra),*** the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labourer for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the

workers of the benefit thereunder and if the contract is found to be not genuine, but a mere camouflage, the so called contract labourers will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labourers in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of the observations made in clause 6. As per clause 6, if the contract is found to be genuine and prohibition notification under Section 10(1) of the Labour Contract Act has been issued by the appropriate Government and the principal employer intends to employ regular workmen in such process/operation, he shall give preference to the erstwhile contract labourers, and if, otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications. Thus, the reference to the conditions as set out in clause 6 for treating the employees of the contractor as employees of the principal employer for regularisation under clause 5, the parameters of suitability, maximum age and qualifications are relevant considerations and nothing else. The declaration to be made by the industrial adjudicator that the contract labourers being the employees of the principal employer, on having concluded that the contract was a sham or a camouflage, will relate back either from the date the demand is made or as per the evidence that the industrial adjudicator may take into

consideration. In the instant case, if the issue No.1(a) is answered in the affirmative, the declaration that the workmen listed in Annexures A and B are/were the employees of the petitioner Company automatically follows and if the said issue is answered in the negative, the employment opportunities for future are only an academic issue, so far as the present Company is concerned, as obviously, it has engaged in slimming down its employment strength and, therefore, such opportunities of additional employment on its role in future is only an illusion. In short, the additional issues sought to be raised by the Petitioner company vide the amendment application and more particularly in Annexure B thereto were not germane to the issues which have been referred to the Industrial Tribunal for adjudication. If the Tribunal ultimately answers the reference in favour of the Union, the canteen employees will be held to be the employees of the petitioner company and if at that point of time the company finds that some canteen employees are surplus, it has a remedy available to it under the I.D. Act by approaching the appropriate authority. It appears that by the proposed amendment, the petitioner Company was intending to short-circuit this process and get the issues adjudicated in advance without going through the route of invoking the remedy under the I.D. Act. This is not permissible and the Industrial Tribunal rightly concluded that by the first part of the amendment, the petitioner company was trying to make out a different case and the issues raised in Annexure B of the amendment application were not germane to the issues referred for adjudication. It was not permissible

for the Tribunal to adjudicate upon the issues which were not referred to it and, in any case, the issues sought to be added for consideration before the Industrial Tribunal were not consequential or incidental issues, warranting adjudication in the pending reference. The petitioner Company is not remedyless and at an appropriate time, if it finds that the canteen employees declared to be its regular employees are surplus to some extent, it has to resort to the remedy available under the I.D. Act, afresh. Nonetheless, as a matter of precaution, there is no harm if it is allowed to place on record some of the averments in Annexure B to the amendment application i.e. Para 13(a) to 13(d) and certainly without allowing the Company to raise any other issues other than already framed by the Industrial Tribunal at Exhibit-15.

9. Thus, the view taken by the Industrial Tribunal in the impugned Order does not suffer from any error apparent on the face of the record and by no stretch of imagination it could be termed as a perverse view. There is no case made out to interfere with the impugned order under Article 227 of the Constitution and hence the challenge to the said order must fail at the threshold.

10. The petition is, therefore, rejected summarily. However, if the petitioner Company applies to the Industrial Tribunal only to place on record the averments in paras 13(a) to 13(d) of Annexure B to the amendment application at Exhibit-23, the same be allowed and it is

clarified that there shall not be any additional issue or issues beyond the issues framed at Exhibit-15 for adjudication in reference No.IT/21/2003.

B.H. MARLAPALLE, J.

ssm.